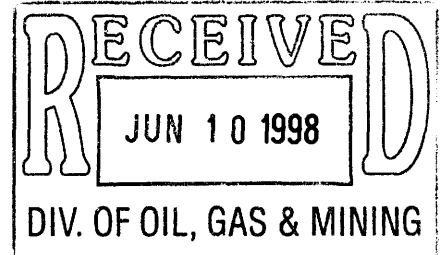


STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL



JAN GRAHAM
ATTORNEY GENERAL



CAROL CLAWSON
Solicitor General

REED RICHARDS
Chief Deputy Attorney General

PALMER DePAULIS
Chief of Staff

June 8, 1998

Lowell Braxton
Acting Director
Utah Division of Oil, Gas &
Mining
1594 West North Temple,
Suite 1210, Box 145801
Salt Lake City, UT
84114-5801

Mary Ann Wright
Deputy Director of Mining
Utah Division of Oil, Gas &
Mining
1594 West North Temple,
Suite 1210, Box 145801
Salt Lake City, UT
84114-5801

Dave Lauriski
Chairman
Utah Board of Oil, Gas &
Mining
c/o Energy West Mining Co.
739 East 2900 South
Box 7
Price, UT 84501

Re: Castle Valley Special Service District v. Board of Oil, Gas & Mining

Dear Lowell, Mary Ann, and Dave:

For your information about the status of the above appeal, enclosed please find a copy of my settlement letter of June 8, 1998 to counsel for the Water Users.

Very truly yours,

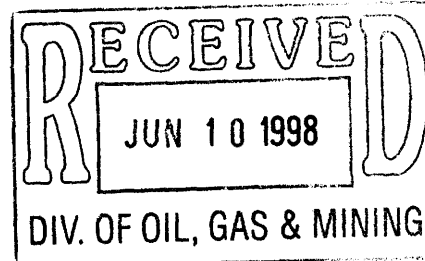
Patrick J. O'Hara
Assistant Attorney General

cc: Daniel G. Moquin, Esq. (w/encl)
Encl.

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL



JAN GRAHAM
ATTORNEY GENERAL



CAROL CLAWSON
Solicitor General

REED RICHARDS
Chief Deputy Attorney General

PALMER DePAULIS
Chief of Staff

June 8, 1998

J. Craig Smith, Esq.
NIELSEN & SENIOR, P.C.
1100 Eagle Gate Tower
60 East So. Temple
Salt Lake City, UT 84111

Jeffrey W. Appel, Esq.
Benjamin T. Wilson, Esq.
APPEL & WARLAUMONT
1100 Boston Building
9 Exchange Place
Salt Lake City, UT 84111

Re: Castle Valley Special Service District v. Board of Oil, Gas & Mining

Dear Craig, Jeff and Ben:

I am writing with regard to our recent settlement discussions concerning the above appeal to the Utah Supreme Court. This letter is in response to the draft "Stipulated Settlement Agreement" sent by Ben Wilson to Craig Smith, Dan Moquin and me by email on May 15, 1998 and, in a modified form, again on May 18, 1998 (the "May Draft").

The bottom line is that the May Draft is not acceptable to the Board of Oil, Gas & Mining (the Board"), whom I represent in this matter, and the Division of Oil, Gas & Mining ("DOGM"), whom Dan Moquin represents. This letter explains why, and concludes with an alternative settlement proposal.

The Board and DOGM are regulatory agencies with a wide range of duties concerning hydrological issues imposed on them (and those whom they regulate) under Utah's federally-mandated regulatory program for coal mining. Under law, the Board and DOGM are duty-bound to apply the coal regulatory law fairly and impartially to all persons who come before the agencies, including, of course, Co-Op Mining Co. (the "Operator") and members of the public, such your clients (the "Water Users").

m-jcs2.698

Under all the circumstances, the Board and DOGM are not willing to change their regulatory relationship with the parties. Rather than voluntarily assuming extra and special contractual duties applicable only to the Operator and the Water Users, the Board and DOGM desire to maintain the existing, neutral, arms-length regulatory relationship with all parties based solely on the legal requirements of the Utah Coal Program. Detailed settlement negotiations based on the May Draft simply would not bear fruit.

Although the Operator has, so far at least, prevailed in this case concerning the Water Users' challenge to its five year permit renewal, the Water Users and the Operator still, as between themselves, might be able to negotiate a reasonable side settlement agreement on water monitoring issues. Indeed, the Board and DOGM routinely encourage management of disputing parties to meet with each other. When they meet with an open mind, parties to long-standing disputes often can find common ground through less expensive (and less formal) avenues of alternative dispute resolution. Perhaps the Water Users' management team will be able to persuade the Operator's management team voluntarily to assume extra water monitoring burdens which go beyond the numerous requirements already imposed on the Operator under the State's comprehensive coal regulatory program.


The Board and DOGM do not need to be parties to a private water monitoring contract. The Board and DOGM are not opposed to any side settlement agreement between the Water Users and the Operator, so long as (1) such a side-agreement does not purport to alter, diminish or frustrate any of the Operator's non-negotiable hydrological duties under the State's coal regulatory program, and (2) such a side-agreement does not purport to enlarge or diminish the non-negotiable jurisdiction, legal duties and administrative prerogatives of the relevant State and/or federal agencies.

Finally, while every case comes with its inherent quotient of litigation risk, the Board and DOGM sincerely feel that the Board's comprehensive and well-reasoned 64-page decision of March 6, 1998 on the collateral estoppel question has a reasonably good chance of being affirmed on appeal by the Utah Supreme Court. The Board and DOGM, therefore, jointly propose a simple, straight-forward settlement mechanism whereby the Water Users and the other parties merely stipulate and move for an order that the appeal to the Supreme Court shall be dismissed with prejudice, with the parties to bear

Messrs. Smith, Appel & Wilson
June 8, 1998
Page 3

their respective attorneys fees and costs. If the Board's and DOGM's settlement proposal is acceptable to your clients, please let me know and I will be happy to draft and circulate to all counsel a "Stipulation, Motion and Order of Dismissal" consistent with this paragraph.

Very truly yours,



Patrick J. O'Hara
Assistant Attorney General

cc:

Daniel G. Moquin, Esq.
Assistant Attorney General
Utah Attorney General's Office
1594 West North Temple, Suite 300
P.O. Box 140855
Salt Lake City, UT 84114-0855



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Michael O. Leavitt
Governor

Ted Stewart
Executive Director

Lowell P. Braxton
Division Director

1594 West North Temple, Suite 1210
PO Box 145801
Salt Lake City, Utah 84114-5801
801-538-5340
801-359-3940 (Fax)
801-538-7223 (TDD)

May 8, 1998

James L. Warlaumont
Appel & Warlaumont
1100 Boston Building
9 Exchange Place
Salt Lake City, UT 84111


Re: Docket Number 95-025 Request for Informal Hearing Transcripts to be
Included in the Record on Appeal

Dear Mr. Warlaumont:

I am responding to your letter of April 30, 1998 requesting that I reconsider my denial to include the transcripts for the Informal Hearing held October 17, 1996, November 8, 1996 and February 28, 1997 in the record for the appeal of Docket Number 95-025. In reviewing your request I remain convinced that my original decision not to include transcripts from the informal hearing was justified.

For additional information on this position, please refer to Final Order of the Board of Oil, Gas and Mining, March 6, 1998, Docket No. 95-025, Cause No. ACT/015/025, page 12, E. Standard of Review which reads: "The threshold question of collateral estoppel is a question of law which the Board reviews de novo for correctness. The Board is not obligated to defer to Director Carter's resolution of the question on remand."

Sincerely,


Lowell P. Braxton
Acting Director

dr

cc: P. O'Hara
D. Moquin
C. Allred

Rec'd 5/11/98

Notice to Mailer of Correction in Address

Addressee's Account Number (All numbers, dates, and letters)

- ☒ No account number on mail
☐ Account number illegible

Addressee's Name

Suane K. Yensen Pres Board of Directors

Old Address (Include apartment or suite number)

Huntington Cleveland Irrig Co

City, State, and ZIP Code

BN 393

Cleveland - UT 84518

New Address (Include apartment or suite number)

Box 93

City, State, and ZIP Code

Cleveland - UT 84518-0093

This card is furnished:

- ☒ For address correction, as requested (your mailpiece was forwarded).
☐ In place of Form 3579 (see reason for nondelivery below).

The address portion of your mailpiece was not readily detachable. Reason for nondelivery:

- | | | |
|---|---|---|
| <input type="checkbox"/> Moved, left no address | <input type="checkbox"/> No such street | <input type="checkbox"/> No such number |
| <input type="checkbox"/> Refused | <input type="checkbox"/> Attempted, not known | <input type="checkbox"/> Unclaimed |

FILED

OCT 20 1997

SECRETARY, BOARD OF
OIL, GAS & MINING

F. Mark Hansen, #5078
624 North 300 West, Suite 200
Salt Lake City, Utah 84103
Telephone: (801) 533-2700

Carl E. Kingston, #1826
3212 South State Street
Salt Lake City, Utah 84115
(801)486-1458

Attorneys for Co-op Mining Company

**BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES, STATE OF UTAH**

IN THE MATTER OF THE)
FIVE-YEAR PERMIT RENEWAL,)
CO-OP MINING COMPANY,)
BEAR CANYON MINE,)
EMERY COUNTY, UTAH)
)
)
)
)
)
)

NOTICE OF CHANGE OF ADDRESS

Docket No. 95-025
Cause No. ACT/015/025

Notice is here given that, effective Monday, October 20, 1997, the office of F. Mark Hansen and the law firm of F. Mark Hansen, P.C. is changed. The new location is:

404 East 4500 South, Suite B-34
Salt Lake City, Utah 84107
Telephone: (801) 266-2882
Telecopier: (801) 266-2888

DATED this 17 day of October, 1997.


Attorney for Co-op Mining Company

CERTIFICATE OF SERVICE

I certify on October 17, 1997 I served the above document by first class mail to:

J. Craig Smith
David B. Hartvigsen
NIELSEN & SENIOR
60 East South Temple, Suite 1100
Salt Lake City, Utah 84111
Attorneys for
North Emery Water Users' Association and
Huntington-Cleveland Irrigation Company

Jeffrey W. Appel
Benjamin T. Wilson
COLLARD, APPEL & WARLAUMONT
9 Exchange Place, Suite 1100
Salt Lake City, Utah 84111
Attorneys for
Castle Valley Special Service District

Daniel G. Moquin
Assistant Attorney General
1594 West North Temple, Suite 300
P.O. Box 140855
Salt Lake City, Utah 84114-0855
Attorney for
Utah Division of Oil, Gas & Mining

A handwritten signature in cursive script, reading "Mark Hansen", written over a horizontal line.

2006p.008

LAW OFFICES OF

F. MARK HANSEN, P.C.

624 NORTH 300 WEST, SUITE 200
SALT LAKE CITY, UTAH 84103
TELEPHONE: (801) 533-2700
FAX: (801) 533-2736

ADMITTED TO PRACTICE IN UTAH,
ARIZONA, COLORADO AND NEVADA.

NEVADA OFFICE:
5675 S. VALLEY VIEW, #200
LAS VEGAS, NEVADA 89118
TELEPHONE: (702) 798-0125

November 29, 1996

James W. Carter
Utah Division of Oil, Gas & Mining
355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203

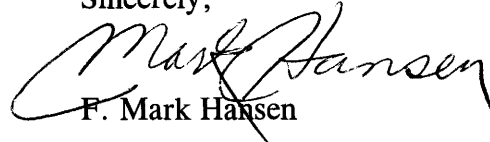
Via facsimile
(801)359-3940

RE: C.W. Mining Co. permit renewal — DOGM hearing on Water Users' protest

Dear Mr. Carter.

C.W. Mining Company would like to put on evidence before the informal conference is closed. I anticipate requiring about three hours, not including cross-examination. Please have someone from your office coordinate with me for available dates.

Sincerely,


F. Mark Hansen

Rec'd 5/15/76

Mail this card to all people, businesses and publications who send you mail. For publications, tape an old address label over name and old address sections and complete new address. **COMPLETE ADDRESS PORTION ON FRONT OF FORM with Name, Street Address, City, State and ZIP Code of Individual or Business to whom you are relaying this card.**

Your Name	Print or Type—Last Name, First Name, Middle Initial <i>North Emery Water Users Assoc</i>				
Old Address	No. and Street <i>Box 140</i>	Apt./Suite No.	P.O. Box	R.D. No.	Rural Box No.
	City and State <i>Elmo Ut</i>	ZIP + 4 Code <i>84521-1</i>			
New Address	No. and Street <i>Box 129</i>	Apt./Suite No.	P.O. Box	R.D. No.	Rural Box No.
	City and State <i>Cleveland Ut</i>	ZIP + 4 Code <i>84518-1</i>			
Sign Here	Signature <i>Laura Fillmore</i>		Date new address in effect		Keyline No. (if any)

PS FORM 3576, 11/92

RECEIVER: Be sure to record the above new address in your address book at home or office.



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Michael O. Leavitt
Governor

Ted Stewart
Executive Director

James W. Carter
Division Director

355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340
801-359-3940 (Fax)
801-538-5319 (TDD)

December 11, 1995

Jeffrey W. Appel
Collard, Appel, and
Warlaumont, L.C.
1100 Boston Building
9 Exchange Place
Salt Lake City, Utah 84111

Re: Co-Op Mining Company, Bear Canyon Mine, Folder #2, ACT/015/025, Emery County, Utah

Dear Jeff:

I am writing to further explain and, I hope, clarify the decision of November 2, 1995, made by the Division with regard to renewal of the Bear Canyon mine permit. Pursuant to R645-303-230, "a valid permit, issued pursuant to the state program, will carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit." Co-Op's Bear Canyon permit was due to expire November 2, 1995. On June 16, 1995, Co-Op submitted a permit renewal application for the Bear Canyon Mine and on August 29, 1995, Co-Op initiated the required public notice.

R645-303-233 sets forth the Division's approval process for renewal applications. R645-233.100 sets forth criteria for approval. R645-233.200 provides as follows: "Burden of Proof. In the determination of whether to approve or deny a renewal of a permit come under the burden of proof will be on the opponents of renewal." R647-300-131.110, et seq. provides that application reviews will not exceed 120 days for permit renewals. Taken together, the Division has interpreted the Coal Regulatory Program rules to require renewal of valid and subsisting coal permit with 120 days of submittal of the application for renewal, before expiration of the permit, in the absence of a showing of facts which would make such renewal an improvident permit issuance. In this instance, although an objection to renewal was timely filed, no such showing was made on or before November 2, 1995, and the Division, therefore, had no basis to take any action other than to approve the renewal.



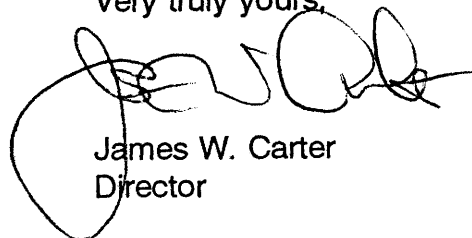
Page 2
Jeff Appel
December 11, 1995

The issues raised by the water users' objections go directly to conclusions which underpin the Division's findings necessary to the issuance and continued viability of Co-Op's permit. Because the issues raised by the water users go directly to findings which support the permit's continued viability, they are objections which may be raised at any time during the permit's life. The remedies sought by the water users, to further condition the existing permit to ensure protection of the quantity and quality of the water users sources, and to either revoke or modify the permit to include adequate provisions for maintenance, testing, exploration, protection and remediation of adverse impacts to the water users' sources, are all remedies available to any adversely affected party upon a showing of facts which would cause the Division to change its conclusions and findings with regard to a mine's hydrologic impacts. The Division has the administrative ability to implement any changed findings by requiring modifications to the permit, or could determine that the impacts are irreparable and that the mining permit itself should be revoked. In other words, the objections raised and remedies requested by the water users in the context of the renewal process may be raised by any party at any time.

The Division has acknowledged that those issues and requests have been made and has agreed to schedule an informal conference to take evidence and argument concerning those allegations at the time and place requested by the water users. It is the Division's position that the water users have not been prejudiced by the Division's decision of November 2nd, to renew the Bear Canyon permit, and that the Division is providing every reasonable opportunity to the water users to complete their fact finding and case preparation before being required to appear at the requested informal conference. The Division is ready to provide you and your clients with any information you may need and we stand ready to act upon any request for administrative discovery or other procedural matters.

I hope this will allay your concerns and those of your clients that the Division's November 2 renewal decision has foreclosed their administrative remedies.

Very truly yours,

A handwritten signature in black ink, appearing to read "James W. Carter", is written over the typed name and title.

James W. Carter
Director

bn
BCANYON